

RECORDS/INFO MANAGEMENT & DOCUMENT RETENTION

10/22/14



Damian Maloney
Records Compliance Specialist
Cumberland Electric Membership Corporation

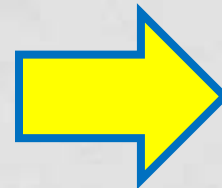
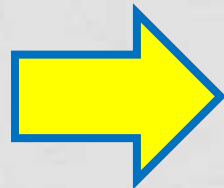
WHO NEEDS RECORDS / INFO MANAGEMENT?

Any and all business entities and most persons.

- It doesn't matter how small or larger your organization is there are laws and/or regulatory requirements that exist that require you keep documents or information for certain periods of time and that certain information be protected.

WHAT IS RECORDS/INFORMATION MANAGEMENT?

Practice of maintaining the records and information of an organization from creation to eventual destruction or archival, and all steps in between. (Info Life Cycle)



WHEN DO WE NEED A RECORDS MANAGEMENT PROGRAM?

NOW!! The sooner the better. Most organizations don't realize the liability associated with lack of a document / information retention program.

Murphy's Law



Proper management of documents/info goes a long way to mitigate potential liability/cost.

WHERE DO RECORDS/INFORMATION RESIDE?

- Physical Records
 - Filing Cabinets, Drawers, Binders
 - Warehouses
 - Where you would least expect them.... Breakroom...
- Electronic Files / Information
 - Primary Business Software(s)
 - Servers / Virtual Servers / Clouds
 - Shared Folders
 - Email, Email, Email
 - Cell Phones
 - Third party email and software
 - Evernote!
 - ASANA
 - Hundreds more out there.....

WHY RECORDS / INFORMATION MANAGEMENT?

- To Improve Efficiency and Productivity
 - Managers and workers still spend up to 20% of time seeking information and up to 50% of the information they do find is irrelevant.
- Disaster Recovery
 - Replication of Vital Records - Plan to ensure continuation of business and resumption of operations in event of disaster – “*Business Continuity*”

WHY RECORDS / INFORMATION MANAGEMENT CONT.

Ensure Legal & Regulatory Compliance and Mitigate Risk

- US is still the most litigious society in the world
- There are 13,000+ laws and regulations that address the management of records and information
- Key issues include;
 - Access / Availability (JB-400)
 - Security / Protection (Physical vs Electronic)
 - Retention (Bonfires)

WHY RECORDS / INFORMATION MANAGEMENT CONT.

Some of the sources of records/information retention requirements applicable to **CEMC** include;

1. USDA – Rural Utilities Service (RUS – Bulletin 180-2)
2. Code of Federal Regulations (CFR – 18 CFR Ch. I)
3. Tennessee Corporate Records Law (TCA § 48-66-101)
4. Internal Revenue Service (IRS)
5. Fair Labor Standards Act
6. National Labor Relations Act
7. Tennessee Fair Labor Standards Act
8. Age Discrimination in Employment Act
9. Title VII of the Civil Rights Act of 1964
10. Employee Retirement Income Security Act
11. Occupational Safety and Health Act (OSHA)
12. Family Medical Leave Act of 1993
13. Americans With Disabilities Act
14. Employee Retirement Income Security Act (ERISA)
15. Tenn State Unemployment Compensation Insurance Law
16. Federal Energy Regulatory Commission (FERC).....



WHY RECORDS / INFORMATION MANAGEMENT CONT.

- Civil Discovery – Show me the money

We work in a good industry, however...



- Interrogatories & Request for production of documents (30 days)
- Second Set (30 days)
- Motion to Compel

WHY RECORDS / INFORMATION MANAGEMENT CONT.

- Federal Rules of Civil Procedure
 - In 2006 the rules were revised to include ESI (Electronically Stored Information)
 - Over half the states have since adopted similar provisions, Tennessee included;
 - Rule 37 Failure to Make or Cooperate in Discovery : Sanctions...
 - Rule 37.06 Electronically Stored Information
 - Judge should then weigh the benefits to the requesting party against the burden and expense of the discovery for the responding party
 - Considering factors such as;
 - ease of accessing the requested information
 - the total cost of production compared to the amount in controversy
 - the materiality of the information to the requesting party
 - the availability of the information from other sources
 - the complexity of the case and the importance of the issues addressed
 - Plus 15 additional factors listed in the rule...

JUDICIAL DISCRETION!

HOW TO CREATE OR UPDATE A RECORDS / INFO MGMT PROGRAM?

- Identify your program administrator
 - New position vs Existing personnel
 - Realize the scope and workload that an undertaking of this magnitude will require.
 - This person may not only develop and administrate the program but will also more than likely be the software administrator.
- Identify your organizational structure.
 - Co-operative
 - Municipality
 - Not-for-profit
- From this, identify all sources of required record/information retention.
 - Federal, State, Local Laws
 - Regulatory Bodies
 - Other sources
 - Parent Organizations (TVA Service Standards)
 - Lenders (RUS)
 - Contracts (FEMA/TEMA)

HOW TO CREATE OR UPDATE A RECORDS / INFO MGMNT PROGRAM?

- Perform an inventory and identify all documents/information with retention value.
 - The “where” section of the presentation...
 - Meet with Managers and Key Personnel
 - Identify the documents they produce and the data they utilize in their world.
 - Find out where it's kept and document it.
 - Determine what has retention value and what doesn't.

2 yrs into program & CEMC has over 500 doc types



HOW TO CREATE OR UPDATE A RECORDS / INFO MGMT PROGRAM?

Create the organizations Retention Schedule;

Inventory + Legal & Reg Requirements = Retention Schedule

Remember when they taught you fractions?

The least common denominator....



HOW TO CREATE OR UPDATE A RECORDS / INFO MGMNT PROGRAM?



Records Retention Schedule

I. Record Related to Employee Selection

Category #	Description of Record	Retention Period	Legal Authority / Rationale
1	Job orders submitted by the employer to employment agencies, or labor organizations for recruitment of employees	1 year from date of submittal	29 U.S.C. §626; 29 C.F.R. §1627.3 (Age Discrimination in Employment Act) 18 C.F.R. § 125.3
2	Job advertisements and notices to public or to employees regarding job openings, training programs, promotions, and opportunities for overtime	1 year from date of notice	29 U.S.C. §626; 29 C.F.R. §1627.3 (Age Discrimination in Employment Act)
3	Criteria for selection for apprenticeship programs in recognized trade or craft; chronological list of all applicant's names, addresses, dates of application, sex, minority group class (race or national original); and any test papers or interview records on which hiring decisions were made	(1) length of apprenticeship + 2 yrs	42 U.S.C. §2000e8c; 29 CFR §1602 (Title VII of the Civil Rights Act of 1964) 18 C.F.R. § 125.3
4	Written training agreements, summaries of applicants' qualifications, job criteria, interview records and identification of minority and female applicants	Duration of training program + 6 yrs	29 U.S.C. §206(d)(1); 29 U.S.C. §211; 29 C.F.R. §516.5 (Fair Labor Standards Act and National Labor Relations Act(s)) 18 C.F.R. § 125.3 Tennessee Statute of Limitations

98 Categories and growing!



HOW TO CREATE OR UPDATE A RECORDS / INFO MGMNT PROGRAM?

Get Support from the Top Down

- Create a policy and supporting procedures that address;
 - Inventory of Records / Information
 - Retention Schedule Documents / Info
 - Destruction of Records and Data
 - Legal Hold Process
 - Access / Security
 - Disaster Recovery

HOW TO CREATE OR UPDATE A RECORDS / INFO MGMNT PROGRAM?

- Other related policies and procedures that may be a part of your program or separate are;
 - Email Retention Policy
 - Cyber Security Policy
 - Personal Electronic Devices Policy
- Make sure your policy and procedures reflect what your actually doing for multiple reasons;
 - This becomes auditable
 - In a legal proceeding if it is determined that your organization applied your retention policy/schedule to selected documents and not others then there may be significant repercussions. (Back to Judicial Discretion)

CEMC implemented it's Policy/Bulletin in May and it's on my calendar to modify accordingly.



HOW TO CREATE OR UPDATE A RECORDS / INFO MGMNT PROGRAM?

- Select a software that meets your records / information program wants and needs.
 - Archiving of documents
 - Workflows
 - Legal Holds
 - Retention/Destruction of Digital Files
 - Performance Data Accessibility and so on...
- CEMC uses Perceptive Software / ImageNow
 - Many pro's and cons but you must select something that is right for your organization.

CEMC RECORDS MANAGEMENT PROGRAM

Set goals and launch program

Goals of CEMC Records Management Program;

- Identify, Organize, and Capture All Business Documents in One Location (ImageNow)
- Establish and Implement Records Mgmt & Retention Policy & Associated Procedures
- Increase Efficiency-Mitigate Liability
- Make CEMC a Paperless Entity
(Or as close as possible!!)



RECORDS/INFORMATION MANAGEMENT AND RETENTION

- Questions

